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14
15 UNITED STATES DISTRICT COURT
16 DISTRICT OF NEVADA

17 PRIME HEALTHCARE SERVICES – RENO,
LLC D/B/A SAINT MARY’S REGIONAL
MEDICAL CENTER,

18 PLAINTIFF,

19 VS.

21 HOMETOWN HEALTH PROVIDERS
INSURANCE COMPANY, INC.,
22 HOMETOWN HEALTH PLAN, INC., AND
HOMETOWN HEALTH MANAGEMENT
COMPANY,

24 DEFENDANTS.

16 Case No. 3:21-cv-00226-MMD-CLB

17 **PLAINTIFF’S MOTION TO STRIKE**
EVIDENCE IN SUPPORT OF
DEFENDANTS’ MOTION TO DISMISS

1
2 Plaintiff Prime Healthcare Services – Reno, LLC d/b/a Saint Mary’s Regional Medical
3 Center (“Saint Mary’s”), by and through its attorneys of record, Snell & Wilmer L.L.P., moves this
4 Court for an Order striking the “Evidence of Coverage (“EOC”)” and the “Winter Declaration”
5 submitted and filed by Defendants as Dkt. 34-1.

6 This Motion is based on the following Memorandum of Points and Authorities and the
7 motions and pleadings on file herein.

8 **MEMORANDUM OF POINTS AND AUTHORITIES**

9 Motions to Dismiss are to be decided based on what has been alleged in the Complaint.
10 Reference to matters outside the pleadings is not permissible. Notwithstanding these requirements,
11 Defendants attach and rely upon the “evidence of coverage” and “Winter Declaration” in their
12 Motion to Dismiss as Dkt. 34-1. None of this evidence was attached or referred to in Saint Mary’s
13 Complaint, none is clearly integral to or relied on by Saint Mary’s Complaint, and each is therefore
14 considered a matter outside the pleadings and subject to a motion to strike pursuant to Fed. R. Civ.
15 P. 12.

16 **A. The “Evidence of Coverage” and the “Winter Declaration” Attached to
Defendants’ Motion to Dismiss Must be Stricken.**

17 Defendants improperly rely upon the “evidence of coverage” (“EOC”) and “Winter
18 Declaration” as support for its Motion to Dismiss. Fed. R. Civ. P. 12(d) requires that if, on a motion
19 under Rule 12(b)(6), “matters outside the pleadings are presented to and not excluded by the Court,
20 the motion must be treated as one for summary judgment under Rule 56.” *See also* Wright & Miller
21 Federal Practice & Procedure, §1366 (3d Ed.). Saint Mary’s requests the Court not consider, and
22 indeed strike, the evidence presented by Defendants’ in their Motion to Dismiss.
23

24 It is well-established that a Court may consider certain materials – documents attached to
25 the complaint; documents incorporated by reference in the complaint – without converting the
26 motion to dismiss into a motion for summary judgment. *Van Buskirk v. CNN*, 284 F.3d 977, 980
27 (9th Cir. 2002); *Barron v. Reich*, 13 F.3d 1370, 1377 (9th Cir. 2002). The Ninth Circuit has held
28 that “a court may consider evidence on which the complaint ‘necessarily relies’ if: (1) the complaint

1 refers to the document; (2) the document is central to the plaintiff's claim; and (3) no party questions
 2 the authenticity of the copy attached to the 12(b)(6) motion." *See Marder v. Lopez*, 450 F.3d 445,
 3 448 (9th Cir. 2006); *Branch v. Tunnell*, 14 F.3d 449, 453-54 (9th Cir. 1994), *overruled on other*
 4 *grounds by Galbriath v. Cty. of Santa Clara*, 307 F.3d 1119 (9th Cir. 2002). Because these factors
 5 are not present, the EOC and the "Winter Declaration" must be stricken in support of Defendants'
 6 Motion to Dismiss.

7 Here, HH improperly submits evidence outside of the pleadings, including the "EOC"
 8 allegedly for one of its 2020 HMO plans, attempting to force Saint Mary's through a 12(b)(6)
 9 motion to take a position on an evidentiary question before discovery. But as HH knows,
 10 submission of such evidence is appropriate only if Saint Mary's complaint refers to and relies on
 11 the appended document, and no party questions its authenticity. Those conditions are not met. In
 12 this case, Saint Mary's did not plead the relevant EOC and does not rely on this EOC in its
 13 Complaint, because the EOC HH has attached to its Motion is a 2020 EOC which Saint Mary's
 14 does not believe could have applied to any of the claims on the Claims List since none of the claims
 15 have dates of services after December 31, 2019. Saint Mary's also does not concede that this
 16 document is authentic: it is not that Saint Mary's knows the document to be a forgery or something
 17 other than what Ms. Winter claims, it is simply that Saint Mary's lacks any information on which
 18 to base such a concession, since Saint Mary's has not seen the document before, and no discovery
 19 has yet occurred whereby Saint Mary's can investigate the document or its application to any claims
 20 in this case, or the credibility of the sponsoring witness, Ms. Winters. Saint Mary's specifically
 21 objects to its introduction without discovery to investigate its authenticity and moves to strike it.
 22 *Taymuree v. Nat'l Collegiate Student Loan Tr.* 2007-2, 16-CV-06138-YGR, 2017 WL 952962, at
 23 *2 (N.D. Cal. Mar. 13, 2017) ("Here, plaintiffs challenge the authenticity of the evidence presented
 24 by defendants . . . Accordingly, it would be improper for the Court to consider such evidence.").
 25 Thus, the EOC must be stricken in support of Defendants' Motion to Dismiss.

26 Moreover, the Winter Declaration must be stricken because it does not refer to any
 27 document or evidence attached or referred to in the complaint—indeed, it is essentially the
 28 summary judgment testimony of a party witness. Admittedly, Ms. Winter's testimony is of limited

1 relevance, since it makes no concrete statements: the most Ms. Winter says is that HH plans
 2 “typically” contain anti-assignment provisions. *See Dkt. 34-1*, Winter Dec., ¶ 4. “Typically” is not
 3 all, as Saint Mary’s pointed out in its concurrently filed Response. Ms. Winter also says nothing
 4 about whether this is typically true in 2020 (the date of this EOC) or was “typically” true in 2019
 5 or 2018 or 2017 when many of the claims were submitted. But Ms. Winter’s testimony, and her
 6 opinion of the breadth and frequency of anti-assignment clauses in HH plan documents, is certainly
 7 not “referred to” in Saint Mary’s complaint, nor is it “central” to Saint Mary’s claims (Ms. Winter
 8 is not mentioned at all in the Complaint). *Smith v. Wolf Performance Ammunition*, 2:13-CV-2223
 9 JCM NJK, 2015 WL 2359063, at *11 (D. Nev. May 18, 2015) (declining to consider an affidavit
 10 attached to a 12(b)(6) motion or arguments relying thereon because it “is inappropriate for the court
 11 to consider at the motion to dismiss stage.”)

12 **CONCLUSION**

13 Based on the foregoing, Saint Mary’s requests the Court grant its Motion Strike.

14 Dated: August 2, 2021

15 SNELL & WILMER L.L.P.

16 By: /s/ Janine C. Prupas

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CERTIFICATE OF SERVICE

I hereby certify that on this date, I electronically filed the **PLAINTIFF'S MOTION TO STRIKE EVIDENCE IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS** with the Clerk of the Court for the U.S. District Court, District of Nevada by using the Court's CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

DATED this 2nd day of August, 2021.

/s/ D'Andrea Dunn
An employee of SNELL & WILMER L.L.P.

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